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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,556	12/04/2000	Pete Hesser		4098

7590 11/04/2004

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/729,556

Applicant(s)

HESSER, PETE

Examiner

Nathan J. Newhouse

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

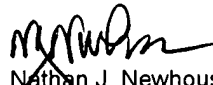
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: See Continuation Sheet

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.


Nathan J. Newhouse
Primary Examiner
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Continuation of 3. (d) Other: applicant's second substitute appeal brief filed Apr. 5, 2004 does not fully comply to notice of non-compliance of 37 CFR 1.192(c) of Mar. 23, 2004. See MPEP 1215.04. See attached notice of non-compliance explaining how the second substitute appeal brief is non-compliant. .

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

1.192(c)

The brief does not contain a statement of the status of all the claims, pending or canceled, and identify the claims appealed as required by 37 CFR 1.192(c)(3). Stating within the brief that claim 1 is canceled herein is improper. Applicant should have filed a separate amendment after final if it was desired to cancel claim 1. As this was not done, the statement of the status of claim 1 is incorrect.

The brief does not contain a concise statement of the issues presented for review as required by 37 CFR 1.192(c)(6). Applicant does not address the rejection of claim 1 under 35 USC 112. Applicant attempted to cancel claim 1 within the appendix of claims and other sections of the appeal brief. As this is not the proper procedure for entering an amendment after final rejection, there is no change to the pending claims of the application. As a result, claims 1 and 2 and any rejection against these claims should have been addressed in the appeal brief.


The brief does not contain, for each rejection under 35 U.S.C. 112, (second paragraph), an argument which specifies the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday, 6:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan J. Newhouse
Primary Examiner
Art Unit 3727